

1 R.S. Chester on October 2, 2008. (Tr. 478-514.) Plaintiff was
2 represented by counsel and testified at the hearing. (Tr. 480-507.)
3 Also testifying at the hearing was vocational expert Dan McKinney.
4 (Tr. 507-13.) ALJ Chester denied benefits. (Tr. 19-29.) The Appeals
5 Council denied review. (Tr. 3-5.) The instant matter is before this
6 court pursuant to 42 U.S.C. § 405(g).

7 **STATEMENT OF FACTS**

8 The facts of the case are set forth in the administrative hearing
9 transcripts and record and will, therefore, only be summarized here.
10 At the time of the hearing, Plaintiff was 43 years old. (Tr. 33.)
11 Plaintiff has a seventh grade education, but earned his GED while in
12 prison. (Tr. 489.) He has no permanent residence, and often is
13 homeless. (Tr. 491.)

14 Plaintiff was incarcerated for 12 years for manslaughter.
15 Plaintiff's limited work history includes feeding and cleaning the
16 pens of the prison tracking dogs, working in a kitchen performing
17 basic food preparation, and as a dishwasher. (Tr. 498-508.)

18 Plaintiff experiences occasional problems with his blood
19 pressure, he has back problems, but his most significant problems are
20 from depression and post traumatic stress syndrome that he says he
21 experiences due to being repeatedly molested as a child by his father.
22 (Tr. 493; 505; 148-55.)

23 **STANDARD OF REVIEW**

24 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
25 court set out the standard of review:

26 A district court's order upholding the Commissioner's
27 denial of benefits is reviewed *de novo*. *Harman v. Apfel*, 211
28 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
Commissioner may be reversed only if it is not supported by
substantial evidence or if it is based on legal error.

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
2 Substantial evidence is defined as being more than a mere
3 scintilla, but less than a preponderance. *Id.* at 1098. Put
4 another way, substantial evidence is such relevant evidence
5 as a reasonable mind might accept as adequate to support a
6 conclusion. *Richardson v. Perales*, 402 U.S. 389, 401
7 (1971). If the evidence is susceptible to more than one
8 rational interpretation, the court may not substitute its
9 judgment for that of the Commissioner. *Tackett*, 180 F.3d at
10 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d
11 595, 599 (9th Cir. 1999).

12 The ALJ is responsible for determining credibility,
13 resolving conflicts in medical testimony, and resolving
14 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
15 Cir. 1995). The ALJ's determinations of law are reviewed *de*
16 *novo*, although deference is owed to a reasonable
17 construction of the applicable statutes. *McNatt v. Apfel*,
18 201 F.3d 1084, 1087 (9th Cir. 2000).

19 It is the role of the trier of fact, not this court, to resolve
20 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
21 supports more than one rational interpretation, the court may not
22 substitute its judgment for that of the Commissioner. *Tackett*, 180
23 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
24 Nevertheless, a decision supported by substantial evidence will still
25 be set aside if the proper legal standards were not applied in
26 weighing the evidence and making the decision. *Browner v. Secretary of*
27 *Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If there
28 is substantial evidence to support the administrative findings, or if
29 there is conflicting evidence that will support a finding of either
30 disability or non-disability, the finding of the Commissioner is
31 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
32 1987).

SEQUENTIAL PROCESS

33 The Social Security Act (the Act) defines disability as the
34 "inability to engage in any substantial gainful activity by reason of

1 any medically determinable physical or mental impairment which can be
2 expected to result in death or which has lasted or can be expected to
3 last for a continuous period of not less than 12 months." 42 U.S.C. §§
4 423 (d)(1)(A), 1382c (a)(3)(A). The Act also provides that a Plaintiff
5 shall be determined to be under a disability only if his impairments
6 are of such severity that Plaintiff is not only unable to do his
7 previous work but cannot, considering Plaintiff's age, education and
8 work experiences, engage in any other substantial gainful work which
9 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
10 1382c(a)(3)(B). Thus, the definition of disability consists of both
11 medical and vocational components., 253 F.3d at 1156 (9th Cir. 2001).

12 The Commissioner has established a five-step sequential evaluation
13 process for determining whether a claimant is disabled. 20 C.F.R. §§
14 404.1520, 416.920. Step one determines if he or she is engaged in
15 substantial gainful activities. If the claimant is engaged in
16 substantial gainful activities, benefits are denied. 20 C.F.R. §§
17 404.1520(a)(4)(I), 416.920(a)(4)(I).

18 If the claimant is not engaged in substantial gainful activities,
19 the decision maker proceeds to step two and determines whether the
20 claimant has a medically severe impairment or combination of
21 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If
22 the claimant does not have a severe impairment or combination of
23 impairments, the disability claim is denied.

24 If the impairment is severe, the evaluation proceeds to the third
25 step, which compares the claimant's impairment with a number of listed
26 impairments acknowledged by the Commissioner to be so severe as to
27 preclude substantial gainful activity. 20 C.F.R. §§
28 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404, Subpt. P, App.

1 1. If the impairment meets or equals one of the listed impairments,
2 the claimant is conclusively presumed to be disabled. If the
3 impairment is not one conclusively presumed to be disabling, the
4 evaluation proceeds to the fourth step, which determines whether the
5 impairment prevents the claimant from performing work he or she has
6 performed in the past. If plaintiff is able to perform his or her
7 previous work, the claimant is not disabled. 20 C.F.R. §§
8 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's
9 residual functional capacity (RFC) assessment is considered.

10 If the claimant cannot perform this work, the fifth and final
11 step in the process determines whether the claimant is able to perform
12 other work in the national economy in view of his or her residual
13 functional capacity and age, education and past work experience. 20
14 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482
15 U.S. 137 (1987).

16 The initial burden of proof rests upon the claimant to establish
17 a *prima facie* case of entitlement to disability benefits. *Rhinehart v.*
18 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172 F.3d
19 1111, 1113 (9th Cir. 1999). The initial burden is met once the claimant
20 establishes that a physical or mental impairment prevents him from
21 engaging in his or her previous occupation. The burden then shifts, at
22 step five, to the Commissioner to show that (1) the claimant can
23 perform other substantial gainful activity, and (2) a "significant
24 number of jobs exist in the national economy" which the claimant can
25 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

26 ALJ'S FINDINGS

27 At step one of the sequential evaluation process, the ALJ found
28 Plaintiff has not engaged in substantial gainful activity since

1 January 27, 2006, the application date. (Tr. 21.) At step two, he
2 found Plaintiff has the following severe impairments: lumbar back
3 pain, depression, posttraumatic stress syndrome and hypertension.
4 (Tr. 21.) At step three, the ALJ found Plaintiff does not have an
5 impairment or combination of impairments that meets or medically
6 equals one of the listed impairments in 20 C.F.R. Part 404, Subpt. P,
7 App. 1. (Tr. 21.) The ALJ then determined:

8 [C]laimant has the residual functional capacity to perform
9 medium work. The claimant can occasionally lift less than
10 50 pounds and frequently lift and carry up to 25 pounds.
11 The claimant can stand or walk up to six hours out of an
12 eight-hour workday, with intermittent sitting. He can
occasionally crouch or crawl. He can have superficial
contact with the general public and non-collaborative
contact with coworkers.

13 (Tr. 22.) At step four, the ALJ found Plaintiff is capable of
14 performing past relevant work as a kitchen helper/dishwasher, dog
15 groomer, and cook's helper. (Tr. 28.) Thus, the ALJ concluded
16 Plaintiff has not been under a disability as defined in the Social
17 Security Act since January 27, 2006, the date the application was
18 filed. (Tr. 28.)

19 ISSUES

20 The question is whether the ALJ's decision is supported by
21 substantial evidence and free of legal error. Specifically, Plaintiff
22 argues: (1) the ALJ improperly rejected the opinions of Plaintiff's
23 examining providers Epichelle Gonzales, MD, Heith Barkley, MS, MHP,
24 and James Goodwin, Ph.D.; (2) the ALJ improperly gave little weight to
25 Plaintiff's testimony; and (3) the ALJ failed to conduct a proper step
26 four analysis. (ECF No. 15 at 15-19.)

27 DISCUSSION

28 1. Opinion Evidence

1 Plaintiff argues that the ALJ failed to provide adequate reasons
2 for rejecting the opinions of Plaintiff's examining¹ providers James
3 Goodwin, Ph.D., Heith Barkley, M.S., MHP, and Epichelle Gonzales, M.D.
4 (ECF No. 15 at 16.)

5 In evaluating medical or psychological evidence, a treating or
6 examining physician's opinion is entitled to more weight than that of
7 a non-examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th
8 Cir.2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.1995). If the
9 treating or examining physician's opinions are not contradicted, they
10 can be rejected only with clear and convincing reasons. *Lester*, 81
11 F.3d at 830. If contradicted, the opinion can only be rejected for
12 "specific" and "legitimate" reasons that are supported by substantial
13 evidence in the record. *Andrews*, 53 F.3d at 1043.

14 **a. James D. Goodwin, Ph.D.**

15 ALJ Chester gave little weight to the evaluation by James D.
16 Goodwin, Ph.D., conducted in October, 2004 for two reasons: (1)
17 Plaintiff had been off his medications for several months during the
18

19 ¹Plaintiff characterizes Epichelle Gonzales, M.D. and Heith
20 Barkley, M.S., MHP, as "treating providers." (ECF No. 15 at 16) A
21 treating physician's opinion is given special weight because of
22 familiarity with the claimant and the claimant's physical condition.
23 *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir.1989). But a review of
24 the record fails to reveal any additional records from Dr. Gonzales
25 or Mr. Barkley, and therefore they are considered examining
26 providers.
27
28

1 period of the examination, and Plaintiff admitted he improves when he
2 is on medication; and (2) a more recent examination in 2007 showed
3 "significant improvement in the claimant's mental status...." (Tr.
4 27.)

5 As ALJ Chester noted, Dr. Goodwin assessed Plaintiff with
6 multiple severe impairments, but at the time, Plaintiff had not been
7 taking his medications. When Plaintiff was asked if his medications
8 for anxiety and depression helped, Plaintiff responded, "[t]o a degree
9 they help." (Tr. 506.) In January, 2004, Plaintiff reported to his
10 case manager that since he had been working, depression was not an
11 issue for him. (Tr. 300.) Impairments that can be controlled
12 effectively with medication are not disabling. *Warre v. Commissioner*
13 *of Social Security*, 439 F.3d 1001 (2006). The ALJ properly relied upon
14 this factor in weighing Dr. Goodwin's assessment.

15 The second reason ALJ Chester gave for according little weight to
16 Dr. Goodwin's 2004 assessment was that a 2007 medical examination
17 indicated "significant" improvement in Plaintiff's mental status.
18 (Tr. 27.) In April, 2007, Plaintiff was admitted to Eastern State
19 Hospital via a 90-day RCW 71.05.230 involuntary commitment because he
20 was "gravely disabled" and presented a likelihood of serious harm to
21 himself. (Tr. 391-92; 394.) Upon admission, Plaintiff was examined by
22 I.A. Santos, MD, a psychiatrist. (Tr. 411.) Dr. Santos concluded that
23 Plaintiff suffers from major depression, recurrent with suicidal
24 attempt and possible posttraumatic stress disorder. (Tr. 412.) Seven
25 days later, Plaintiff was described as "slowly improving, mood less
26 depressed." (Tr. 405.)

27 Roughly four months later, Plaintiff was discharged from Eastern
28 Hospital to a diversion bed. (Tr. 403.) His discharge summary was

1 completed by Jaime Y. Basnillo, M.D., a psychiatrist. (Tr. 409.) Dr.
2 Basnillo noted that upon discharge, Plaintiff did not exhibit acute
3 emotional or physical distress and he denied suicidal ideation. (Tr.
4 407.) Dr. Basnillo diagnosed Plaintiff with Dysthymia, possible post-
5 traumatic stress disorder, alcohol abuse and mixed substance abuse.
6 He also found that Plaintiff had moderate-to-severe chronic mental
7 illness and substance use. (Tr. 408.) Dr. Basnillo indicated that
8 Plaintiff's prognosis was "guarded due to his substance use,
9 particularly alcohol in self-medicating his psychological symptoms and
10 his tendency to become violent." (Tr. 409.) Dr. Basnillo also noted
11 that Plaintiff was ambivalent and refused psychotherapy during his
12 hospitalization. (Tr. 409.) Thus, the records from Eastern State
13 Hospital support the ALJ's reasons for giving little weight to Dr.
14 Goodwin's assessment.

15 The ALJ's specific reasons for rejecting the opinion of Dr.
16 Goodwin - Plaintiff's impairments improve when he is medicated and
17 when he receives treatment - are specific, legitimate reasons
18 supported by the substantial evidence in the record.

19 **b. Heath Barkley, M.S., MHP**

20 The ALJ also gave little weight to the December 2008 evaluation
21 by Heath Barkley, M.S., MHP that was conducted in jail following an
22 alcohol-related incident. (Tr. 27.) Mr. Barkley assessed Plaintiff
23 with marked impairments in suicidal trends, social withdrawal,
24 physical complaints and global illness. (Tr. 434.) Mr. Barkley
25 diagnosed major depressive disorder, severe, recurrent and post-
26 traumatic stress syndrome. (Tr. 434.) Plaintiff displayed marked
27 impairments in the ability to: (1) relate appropriately to co-workers
28 and supervisors; (2) interact appropriately in public contacts; and

1 (3) control physical or motor movements and maintain appropriate
2 behavior. (Tr. 435.)

3 The ALJ acknowledged that Plaintiff's results from the mental
4 mini-exam were below the threshold for impairment, but opined this
5 result was likely due to Plaintiff's recent consumption of alcohol:

6 [i]t is possible the claimant's cognitive abilities were
7 diminished as a result of his recent substance abuse and
8 that his cognitive abilities would return to normal once he
stopped abusing alcohol for a longer period of time.

9 (Tr. 27.)

10 This conclusion is contradicted by the record. The clinical
11 findings indicate that none of the diagnosed conditions were likely
12 caused by alcohol, nor were the cognitive limitations likely to
13 dissipate with sixty days of sobriety. (Tr. 434-35.)

14 The Commissioner argues that Mr. Barkley's opinion was entitled
15 to less weight because he as not an acceptable medical source under
16 the regulations. (ECF. NO. 17 at 9.) In addition to "acceptable
17 medical sources,"² an ALJ may consider evidence from "public and
18 private welfare agency personnel," when assessing the severity of a
19 claimant's impairments and the resulting effect on the claimant's
20 ability to work. 20 C.F.R. § 404.1513(d)(3). However, an ALJ may
21 disregard opinion evidence provided by "other sources," if the ALJ
22 gives reasons germane to each witness for doing so. *Turner v.*
23 *Commissioner of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir.2010). In this
24 case, ALJ Chester's reasons for disregarding Mr. Barkley's "other
25 source" assessments were unsupported by the record, and thus the

27 ²"Sources who can provide evidence to establish an impairment."
28

20 C.F.R. § 404.1513(a)

1 failure to accord sufficient weight to Mr. Barkley's evaluation as an
2 "other source" was error.

3 **c. Epichelle Gonzales, M.D.**

4 Plaintiff complains the ALJ did not address the December 2004
5 opinion from Epichelle Gonzales, M.D., of the Chelan-Douglas
6 Behavioral Health Clinic. Dr. Gonzales diagnosed Plaintiff with
7 posttraumatic stress disorder, major depressive disorder - recurrent,
8 and polysubstance abuse. (Tr. 232.) Dr. Gonzales's report indicated
9 that Plaintiff had been off his medications for approximately six
10 months, because he could not afford to pay for them. Plaintiff was
11 seeking a new prescription and told Dr. Gonzales that when he was
12 taking Prozac, his depression was "not as intense." (Tr. 230.)

13 The ALJ need not discuss all evidence presented, but must explain
14 why significant probative evidence has been rejected. *Vincent v.*
15 *Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). In this case, it is
16 not clear that Dr. Gonzales' single exam was significant and
17 probative. To the extent that Dr. Gonzales' exam indicates that
18 Plaintiff's condition deteriorates when he is not medicated, the
19 report is merely cumulative and thus is not "significant probative
20 evidence" requiring an explicit discussion by the ALJ. *Vincent*, 739
21 F.2d 1393. The ALJ's failure to specifically address Dr. Gonzales'
22 opinion evidence was not error.

23 **2. Credibility of Plaintiff**

24 Plaintiff also argues that the ALJ improperly gave little weight
25 to Plaintiff's testimony, and that the ALJ erred by concluding that
26 Plaintiff's daily activities contradict a finding that he is disabled.
27 (ECF No. 15 at 17.)

28 The ALJ is responsible for determining credibility, resolving

1 conflicts in medical testimony, and for resolving ambiguities.
2 *Andrews*, 53 F.3d at 1039. However, the ALJ's findings must be
3 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d
4 1229, 1231 (9th Cir.1990). Once the claimant produces medical evidence
5 of an underlying impairment, the ALJ may not discredit the claimant's
6 testimony regarding the severity of symptoms merely because it is not
7 supported by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d
8 341, 343 (9th Cir.1991) (en banc).

9 Unless affirmative evidence exists establishing that the claimant
10 is malingering, the ALJ's reasons for rejecting the claimant's
11 testimony must be "clear and convincing." *Lester*, 81 F.3d at 834
12 (internal quotation marks omitted); *Swenson v. Sullivan*, 876 F.2d 683.
13 687 (9th Cir.1989). "General findings are insufficient; rather, the
14 ALJ must identify what testimony is not credible and what evidence
15 undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill*
16 *v. Shalala*, 12 F.3d 915, 918 (9th Cir.1993). Questions of credibility
17 are solely within the control of the ALJ. See *Sample v. Schweiker*, 694
18 F.2d 639, 642 (9th Cir.1982).

19 In this case, the ALJ provided two reasons for discrediting the
20 Plaintiff: (1) Plaintiff "was not completely forthright about his past
21 legal problems;" and (2) Plaintiff's daily activities did not support
22 his claims of disabling symptoms. (Tr. 25-26.)

23 First, it is not clear from the ALJ's ruling when Plaintiff was
24 not "completely forthright." During the hearing, Plaintiff was asked
25 discrete, closed questions about certain crimes, and he answered those
26 fully. At no time during the hearing is Plaintiff asked whether he has
27 revealed each and every one of his convictions. Instead, Plaintiff
28 simply answered questions as he was asked. For example, when asked by

1 his attorney and later the ALJ, Plaintiff answered questions about
2 manslaughter, burglary, and possession of stolen property. (See Tr.
3 490; 496-97; 499-500.)

4 The ALJ relies upon the omission of two convictions - assault and
5 passing bad checks - to establish Plaintiff's lack of forthrightness.
6 Yet the record reveals Plaintiff is forthcoming about his more serious
7 conviction for manslaughter and his resulting lengthy incarceration.
8 ALJ Chester's reliance upon Plaintiff's failure to disclose two felony
9 convictions is not a clear and convincing reason to discount
10 Plaintiff's credibility.

11 The ALJ also found that Plaintiff's reported daily activities
12 indicated an ability to work and undercut the credibility of his
13 claims to the contrary. Plaintiff's reported activities included
14 preparing a meal (eating cold foods in a grocery store), building a
15 campfire to stay warm, and, when in transitional housing, answering
16 the phone and taking out the trash. (Tr. 26.)

17 It is difficult to equate these minimal subsistence activities
18 with the activity level necessary to sustain a job in the workplace.
19 A plaintiff's daily activities impact his or her credibility only when
20 the level of activity is inconsistent with the claimed limitations.
21 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.1998) ("disability
22 claimants should not be penalized for attempting to lead normal lives
23 in the face of their limitations."); *Cooper v. Bowen*, 815 F.2d 557,
24 561 (9th Cir.1987) (disability claimants are not required to "vegetate
25 in a dark room" in order to be eligible for benefits). See also *Fair*
26 885 F.2d at 603 ("Many home activities are not easily transferable to
27 ... the more grueling environment of the workplace...").

28 In this case, the minimal activities cited by ALJ Chester are

1 consistent with Plaintiff's claimed limitations resulting from his
2 impairments. The reasons provided by the ALJ in discrediting
3 Plaintiff's testimony fall short of "clear and convincing," and thus
4 the ALJ's credibility determination regarding Plaintiff was erroneous.

5 **3. Performance of past work**

6 Plaintiff argues that the ALJ failed to properly assess his RFC
7 to perform the requirements of his past relevant work as generally and
8 actually required. Plaintiff also argues that the hypothetical failed
9 to include both his mental and physical impairments. (ECF No. 15 at
10 19)

11 At step four, plaintiff has the burden of showing that he could
12 not perform his past relevant work as actually performed or as
13 generally performed. *Pinto v. Massanari*, 249 F.3d 840, 844-45 (9th
14 Cir.2001). However, the ALJ still has a duty "to make the requisite
15 factual findings to support his conclusion." *Id.* at 844. He must make
16 specific findings as to the claimant's RFC, the physical and mental
17 demands of the past relevant work, and the relation of the RFC to the
18 past work. *Id.* (citing SSR 82-62). To determine the general demands of
19 the claimant's past relevant work, the ALJ may refer to the Dictionary
20 of Occupational Titles ("DOT"). *Id.* at 845-46 (citing *Johnson v.*
21 *Shalala*, 60 F.3d 1428, 1435 (9th Cir.1995)).

22 "The decision as to whether the [plaintiff] retains the
23 functional capacity to perform past work ... has far-reaching
24 implication and must be developed and explained fully in the
25 disability decision." SSR 82-62. An ALJ must obtain adequate
26 documentation of past work to support the decision as to the
27 plaintiff's ability to return to past work:

28 Adequate documentation of past work includes factual

1 information about those work demands which have a bearing on
2 the medical established limitations. Detailed information
3 about strength, endurance, manipulative ability, mental
demands and other job requirements must be obtained as
appropriate.

4 *Id.*

5 At step four, the ALJ was required to make three distinct
6 findings of fact related to: (1) the plaintiff's RFC, (2) the physical
7 and mental demands of plaintiff's past jobs; and (3) the plaintiff's
8 RFC would permit a return to past jobs. SSR 82-62. In this case, the
9 ALJ failed to do so. Instead, the ALJ simply recited Plaintiff's past
10 occupations with the respective skill and exertional levels. (Tr. 28.)
11 Next, the ALJ summarily concluded that given Plaintiff's RFC, he "is
12 able to perform the work as it is typically performed." (Tr. 28.)

13 Where an ALJ provides very few findings and relies largely on the
14 conclusions of a vocational expert, the court has difficulty reviewing
15 the ALJ's decision. *Pinto*, 249 F.3d at 847. "Requiring the ALJ to make
16 specific findings on the record at each phase of the step four
17 analysis provides for meaningful judicial review. When ... the ALJ
18 makes findings only about the claimant's limitations, and the
19 remainder of the step four assessment takes place in the [vocational
20 expert's] head, we are left with nothing to review." *Pinto*, 249 F.3d
21 at 847, quoting, *Winfrey v. Chater*, 92 F.3d 1017, 1025 (10th
Cir.1996).

22 In the absence of accurate³, explicit findings about the physical
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24 ³For example, Plaintiff testified that while in prison, he fed
25 and washed the tracking dogs, checked them for ticks, kept the pens
26 clean, and mowed the grass in the pens. (Tr. 498.) The ALJ concluded
27 that this constituted a dog groomer position. (Tr. 508; Tr. 28.) But
28 the DOT dog groomer definition is significantly more skilled than

1 and mental demands of Plaintiff's past jobs, the step four assessment
2 was deficient. As a result, substantial evidence does not support the
3 ALJ's decision that Plaintiff could perform his past relevant jobs as
4 actually performed. Where unresolved issues exist and the record does
5 not clearly require a finding of disability, the court should remand
6 for further administrative proceedings to remedy defects in the
7 original administrative proceedings. See *Holohan v. Massanari*, 246
8 F.3d 1195, 1210 (9th Cir.2001). Because issues remain with respect to
9 the medical evidence in this record, Plaintiff's residual functional
10 capacity and his ability to perform his past jobs, this matter should
11 be remanded to conduct further administrative proceedings.

12 Nor is the ALJ's step four determination clearly supported by
13 substantial evidence, given the errors in evaluating the medical
14 evidence, in evaluating Plaintiff's credibility and in assessing
15 plaintiff's residual functional capacity and in making the necessary
16 findings regarding the requirements of Plaintiff's previous jobs.

17 CONCLUSION

18 The ALJ's decision is based on legal error. On remand, the ALJ is
19 directed to provide "clear and convincing" credibility findings, re-
20 evaluate the medical evidence in its entirety and obtain a new
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22 the prison duties described by Plaintiff, including "study[ing]
23 proportions of dog to determine most appropriate cutting pattern to
24 achieve desired style." See DICOT 418.674-010. Simply washing and
25 checking a dog for ticks is quite different from performing a
26 clipping pattern to shape its coat. The ALJ's finding that
27 Plaintiff's past work as a "dog groomer" was not supported by the
28 evidence.

1 psychological evaluation that includes an assessment of Plaintiff's
2 nonexertional mental limitations. The ALJ is further directed to make
3 new step-four findings in light of the new RFC, and if necessary,
4 proceed to step five.

5 Accordingly,

6 **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment (**EFC No. 14**) is
8 **GRANTED;**

9 2. The case is **REVERSED AND REMANDED** to the Commissioner for
10 additional proceedings pursuant to sentence four of 42 U.S.C. § 405(g)
11 and consistent with this Order;

12 3. Defendant's Motion for Summary Judgment (**EFC No. 16**) is
13 **DENIED.**

14 4. Application for attorney fees may be made by separate
15 motion.

16 The District Court Executive is directed to file this Order and
17 provide a copy to counsel for Plaintiff and Defendant. Judgment shall
18 be entered for **Plaintiff**, and the file shall be **CLOSED**.

19 DATED July 18, 2011.

20
21 S/JAMES P. HUTTON

22 UNITED STATES MAGISTRATE JUDGE
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